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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JOHN RICHARD DELEON
410 Raymondale Drive, Apt. 14
South Pasadena, CA 91030

Applicant for Vocational Nurse License

Respondent.

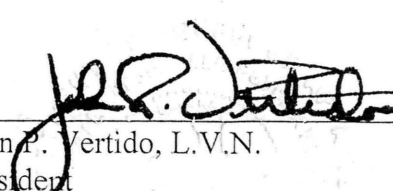
Case No. PT-2009-1368

ORDER NUNC PRO TUNC

The Decision in the above-entitled matter, dated June 1, 2011, contains a clerical error in the address. The address reads 415 Raymondale Drive, Apt. 14, South Pasadena, CA 91030, an incorrect address of record. The address should read 410 Raymondale Drive, Apt. 14, South Pasadena, CA 91030. Due to clerical error, the Decision was not properly served to the correct address of record.

Good cause appearing, the Decision is hereby amended nunc pro tunc to correct a clerical error and re-issued for proper service.

IT IS SO ORDERED this 3rd day of June, 2011.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. VN-2009-1368

JOHN RICHARD DELEON
415 Raymondale Drive, Apt. 14
South Pasadena, CA 91030

OAH No. 2010091120

Applicant for Vocational Nurse License

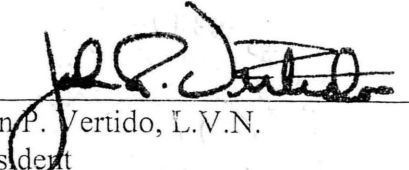
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on July 1, 2011.

IT IS SO ORDERED this 1st day of June, 2011.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JOHN RICHARD DeLEON,

Respondent.

Case No. VN-2009-1368

OAH No. 2010091120

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on March 10, 2011.

Langston M. Edwards, Deputy Attorney General, represented Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant), the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs of the State of California.

John Richard DeLeon (Respondent) represented himself.

Oral and documentary evidence was received, and the matter was argued.

The case was submitted for decision on March 10, 2011.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in this proceeding in her official capacity.

2. On July 27, 2009, the Board of Vocational Nursing and Psychiatric Technicians received an application for a Vocational Nurse License from John Richard

DeLeon (Respondent). Prior to that on April 13, 2009, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on April 21, 2010.

3. On May 21, 2002, in a criminal proceeding entitled *The People of the State of California v. John Richard DeLeon* (Santa Clara County Superior Court, 2002, No. CC24587), Respondent, upon his nolo contendere plea, was convicted of violating Penal Code section 12020, subdivision (a) (1), manufacture, import, sale, supply or possession of certain weapons (brass knuckles), a misdemeanor. The court placed Respondent on summary probation for a period of two years upon certain terms and conditions including 3 days in the county jail, with credit for time served. Respondent successfully complied with all of the terms and conditions imposed.

4. The facts and circumstances surrounding Respondent's May 2002 conviction are as follows: Police officers, serving a warrant on Respondent's friend, found Respondent to be in possession of an unlawful weapon (metal knuckles) stored in the glove compartment of Respondent's automobile. Respondent admitted buying the knuckles for protection. Respondent was also found to be in possession drugs (methamphetamine) and a glass pipe. (No charges were filed on the drugs and paraphernalia, however.)

5. On November 18, 2002, in a criminal proceeding entitled *The People of the State of California v. John Richard DeLeon* (Santa Clara County Superior Court, 2002, No. CC253095), Respondent, upon his guilty plea was convicted of violating Vehicle Code section 23109, subdivision (a), speed contest and exhibition of speed, a misdemeanor. The court placed Respondent on summary probation for a period of two years and ordered him to pay \$200.00. Respondent has complied with all the terms and conditions imposed.

6. The facts and circumstances surrounding Respondent's November 2002 conviction are as follows: Respondent unlawfully accelerated his vehicle in a speed competition with another vehicle while driving on a public road. He was pulled over by a police officer and issued a traffic citation.

7. On August 26, 2004, in a criminal proceeding entitled *The People of the State of California v. John Richard DeLeon* (Santa Clara County Superior Court 2004, No. CC460356), Respondent, upon his guilty plea, was convicted of violating Health and Safety Code section 11377, subdivision (a), unauthorized possession of a controlled substance, a felony, and Health and Safety Code section 11550, subdivision (a), under the influence of a controlled substance, a misdemeanor. The court placed Respondent on probation for a period of 2 years, and ordered him to enroll and successfully complete a Proposition 36 drug treatment program. Respondent was also ordered to pay \$560.00 in fines and fees. In addition, Respondent was ordered to register as a drug offender which he did. Respondent successfully completed the Proposition 36 drug program. On

August 8, 2006, the Court granted Respondent's motion to reduce his pleas to not guilty and expunged his conviction.

8. The facts and circumstances surrounding Respondent's August 2004 conviction are as follows: Late in the evening on July 19, 2004, Respondent was driving his vehicle when he was stopped for a traffic check by a police officer. Respondent was discovered to be under the influence of a stimulant (methamphetamine).

9. At the time of completing his license application with the Board, Respondent was asked "Have you ever been convicted of any offense, including traffic violations?" Respondent checked the 'No' box in answer to the question. Respondent admitted that this was a mistake on his part. He indicated that the reason he did not complete the portion of the application asking for the details of his convictions was that he could not recall the dates and other specifics about them and had been told to leave blank spaces so that the information could be filled in later.

10. Respondent has not been on drugs since 2004. It was stipulated between the parties that all of Respondent's drug tests have been negative.

11. In order to successfully complete his drug rehabilitation, Respondent moved to Southern California and basically started his life over. He does not associate with his former friends in Northern California.

12. Respondent married his wife on April 24 2004. He met her in Los Angeles. Together they went through his drug rehabilitation and vocational nurse training. They have now been married seven years. They have a four year old son. Both of them share the child caring responsibilities. His wife believes that Respondent is good father to his son.

13. Respondent's wife testified in this proceeding. She summarized Respondent's rehabilitation and the success he has had. In her opinion, a substantial part of his success has been due to their involvement in the church they attend.

14. Respondent graduated from vocational nursing school in 2009.

15. Respondent's was first employed in the Los Angeles area in a diagnostics laboratory. The employer testified in support of Respondent's license application in this proceeding. The employer stated that he gave Respondent an opportunity to succeed and respondent did so. The employer has followed Respondent's activities since that time and is very positive about Respondent's success.

16. Respondent submitted six letters of reference. One was from his wife who also testified in this proceeding. One of his teachers at vocational nurse training submitted a letter stating that Respondent was an outstanding student. Other letters came from family friends who have known Respondent for a number of years or were

classmates of Respondent during his vocational nurse training. At least two of those persons were aware of Respondent's past problems and are very positive about his future prospects. All gave Respondent high marks as an outstanding person.

LEGAL CONCLUSIONS

1. Section 2866, of the Business and Professions Code (Code) provides that the Board may deny a license when it finds that the applicant has committed any acts constituting ground for denial of licensure under section 480 of the Code.

2. Business and Professions Code section 480 states in pertinent part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.”

3. Section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Business and Professions Code section 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(c) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.”

4. Section 2878.5 states, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or posses in violation of law . . . any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code.

(b) Use any controlled substance as defined in Division 10 of Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code . . . in a manner dangerous or injurious to himself . . . or to the extent that such use impairs his . . . ability to conduct with safety to the public the practice authorized by his . . . license.”

5. Section 493 of the Code states:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for license . . . upon the ground that the applicant . . . has been convicted of a crime substantially related to the qualifications, function, and duties of the licensee in question,, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of the discipline or to determine if the conviction is substantially related to the qualifications, function, and duties of the licensee in question.”

6. California Code of Regulations, title 16, section 2521, states:

“For the purposes of denial . . . of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by this license in a manner consistent with the public health, safety or welfare.”

7. "Methamphetamine," is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d) (2) and is categorized as a dangerous drug pursuant to Business and Profession Code section 4022.

8. Respondent's criminal convictions set forth in Factual Findings 3 through 8 are substantially related to the qualifications, functions, and duties of a person licensed by the Board in that they evidence present or potential unfitness to perform the functions and duties of a licensed vocational nurse in a manner consistent with the public health, safety and welfare. California Code of Regulations, title 16, section 2521.

9. Cause exists pursuant to Code sections 2866; 480, subdivisions (a) (1) and (b); and 493 to deny Respondent's license application to the Board as a result of Respondent's criminal convictions of crimes, set forth in Factual Findings 3 through 8, in that they are substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

10. Cause exists pursuant to Code sections 2866, and 480, subdivision (c), to deny Respondent's license application to the Board in that Respondent knowingly made a false statement of fact in his license application to the Board when he indicated on his application that he had not been convicted of a crime. Factual Finding 9.

11. Cause exists pursuant to Code sections 2866, 480, subdivision (a) (3), and 493 to deny Respondent's application to the Board in that his criminal convictions set forth in Factual Findings 3 through 8 involved acts which is done by a licensee would be grounds for suspension or revocation of his license.

12. Pursuant to Code section 480, subdivision (b) and California Code of Regulations, title 16, sections 2524 and 2579.10, the Board's Disciplinary Guidelines are to be taken into consideration in reaching a decision and determining whether Respondent has been rehabilitated.. Respondent has complied with all the terms and conditions imposed by the criminal courts. In his most serious conviction (Factual Findings 6 and 7) his guilty pleas have been withdrawn and the convictions expunged. Respondent successfully completed the drug rehabilitation program and has not used drugs since 2004. He moved to Southern California to get away from his former friends. He met and married his wife in Los Angeles. Together they have worked to overcome his previous problems and for him to get through vocational nursing school. They are active in the church they attend. Respondent has submitted letters of reference from a former employer, one of his teachers in nursing school and friends who have known him over the years who have attested to Respondent's outstanding nature. From the foregoing, it has been demonstrated that Respondent substantially meets the Board's rehabilitation guidelines. Under these circumstances, a probationary license is consistent with public interest.

ORDER

Respondent John Richard DeLeon vocational nurse license application is denied. However, said denial is stayed for a period of two years and Respondent shall be issued a probationary license upon the following terms and conditions.

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Probation Program.

Upon successful completion of probation, Respondent's license will be fully restored.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where he has ever been licensed as a vocational/practical nurse, psychiatric

technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he resides or practices outside of California. Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon his return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his employer of the probationary status of respondent's license. This notification to Respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his

probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if he is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. LICENSE SURRENDER

During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

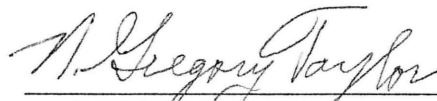
Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A licensee who surrenders his license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

13. VIOLATION OF PROBATION

If Respondent violates the conditions of his probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license. If during probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

DATED: April 6, 2010.



N. GREGORY TAYLOR

Administrative Law Judge

Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC
9 **TECHNICIANS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. VN-2009-1368

12 **JOHN RICHARD DELEON**
13 **1127 Magnolia Street, #2**
South Pasadena, CA 91030
14 **Applicant for Vocational Nurse License**

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Statement of Issues
20 solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and
21 Psychiatric Technicians.

22 2. On or about July 27, 2009, the Board of Vocational Nursing and Psychiatric
23 Technicians received an application for Vocational Nurse License from John Richard Deleon
24 (Respondent). On or about April 13, 2009, John Richard Deleon certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on April 21, 2010.

27 //

28 //

JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2866 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

5. Section 480 states, in pertinent part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

...

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the penal code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.”

6. Section 2878 states, in pertinent part:

“The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)) for any of the following:

1 (a) Unprofessional conduct, which includes, but is not limited to, the following:

2

3 (e) Making or giving any false statement or information in connection with the application
4 for issuance of a license.

5 (f) Conviction of a crime substantially related to the qualifications, functions, and duties of
6 a licensed vocational nurse, in which event the record of the conviction shall be conclusive
7 evidence of the conviction.”

8 7. Section 2878.5 states, in pertinent part:

9 “In addition to other acts constituting unprofessional conduct within the meaning of this
10 chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the
11 following:

12 (a) Obtain or possess in violation of law ... any controlled substance as defined in Division
13 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing
14 with Section 4210) of Chapter 9 of Division 2 of this code.

15 (b) Use any controlled substance as defined in Division 10 of the Health and Safety Code,
16 or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of
17 Division 2 of this code ... in a manner dangerous or injurious to himself .. or to the extent that
18 such use impairs his ... ability to conduct with safety to the public the practice authorized by his
19 ... license.”

20 8. Section 493 of the Code states:

21 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
22 the department pursuant to law to deny an application for a license ... upon the ground that the
23 applicant ... has been convicted of a crime substantially related to the qualifications, functions,
24 and duties of the licensee in question, the record of conviction of the crime shall be conclusive
25 evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire
26 into the circumstances surrounding the commission of the crime in order to fix the degree of
27 discipline or to determine if the conviction is substantially related to the qualifications, functions,
28 and duties of the licensee in question.”

1
2 **REGULATORY PROVISIONS**

3 9. California Code of Regulations, title 16, section 2521, states:

4 “For the purposes of denial ... of a license pursuant to Division 1.5 (commencing with
5 Section 475) of the Business and Professions Code, a crime or act shall be considered to be
6 substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a
7 substantial degree it evidences present or potential unfitness of a licensed vocational nurse to
8 perform the functions authorized by his license in a manner consistent with the public health,
9 safety, or welfare.”

10
11 **CONTROLLED SUBSTANCES**

12 10. “Methamphetamine,” is a Schedule II controlled substance as designated by Health
13 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
14 pursuant to Business and Professions Code section 4022.

15
16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 (Convictions of Substantially-Related Crimes)

18 11. Respondent's application is subject to denial under Code sections 2866 and 480,
19 subdivisions (a)(1) and (b) and 493 as a result of Respondent's convictions of crimes that are
20 substantially related to the qualifications, functions, and duties of a licensed vocational nurse, as
21 follows:

22 a. On or about May 21, 2002, in a criminal proceeding entitled *The People of the*
23 *State of California v. John Richard DeLeon* (Santa Clara Co. Super. Court, 2002, No.
24 CC245871). Respondent was convicted by plea of nolo contendere of one misdemeanor count of
25 Pen. Code § 12020(a)(1) [manufacture, import, sale, supply or possession of certain weapons] .
26 Respondent was sentenced to two years of probation and ordered to pay \$100.00 in fines.

27 b. The underlying circumstances occurred on or around April 14, 2002 at
28 approximately 3:45 p.m. when officers from the San Jose Police Department arrived at the home

1 of the Respondent's friend to serve an outstanding bench warrant. The Respondent was contacted
2 first at the front of the home and was found to be in possession of an unlawful weapon (metal
3 knuckles) stored in the glove compartment of his vehicle. The Respondent admitted buying the
4 metal knuckles and admitted that they were for protection. Upon further search, the officers
5 discovered drugs (methamphetamine) and drug paraphernalia (glass pipe) inside of the
6 Respondent's backpack. The Respondent admitted placing a baggy containing "meth" inside of
7 his backpack but denied knowing how the glass pipe got there.

8 c. On or about November 18, 2002, in a criminal proceeding entitled *The People*
9 *of the State of California v. John Richard DeLeon* (Santa Clara Co. Super. Court, 2002, No.
10 CC253095). Respondent was convicted by plea of guilty of one misdemeanor count of Veh. Code
11 § 23109(a) [speed contests and exhibitions of speed]. Respondent was sentenced to two years of
12 probation and ordered to pay \$200.00 in fines.

13 d. The underlying circumstances occurred on or around June 19, 2002 when
14 Respondent unlawfully accelerated his vehicle in a speed competition with another vehicle while
15 driving on public roads. The Respondent was pulled over by an officer and issued a traffic
16 citation.

17 e. On or about August 26, 2004, in a criminal proceeding entitled *The People of*
18 *the State of California v. John Richard DeLeon* (Santa Clara Co. Super. Court, 2004, No.
19 CC460356). Respondent was convicted by a plea of guilt to one felony count of Health & Safety
20 Code § 11377(a) [unauthorized possession of a controlled substance] and one misdemeanor count
21 of Health & Safety Code § 11550(a) [use or under the influence of a controlled substance]. The
22 Respondent was sentenced to two years of probation and ordered to enter and complete
23 Proposition 36 drug treatment program. The Respondent was ordered to pay approximately
24 \$560.00 in fines and fees. On or around September 5, 2005, the Respondent completed drug
25 treatment program and was discharged. On or around August 8, 2006, the Respondent's guilty
26 plea was set aside pursuant to Court order.

27 f. The underlying circumstances occurred on or around July 19, 2004 at
28 approximately 2:50 a.m. when during a traffic stop, a police officer from the San Jose Police

1 Department observed that Respondent exhibited symptoms of being under the influence of
2 stimulants. The Respondent appeared to have "dry cakey mouth, inability to sit still, fluttery
3 eyelids, excessive perspiration (on a cool night), dilated pupils and pulse of 140 bpm. The
4 Respondent admitted that he had used "meth" approximately "30 minutes" before his contact with
5 the officer. When questioned further, the Respondent admitted to possessing 2 grams of
6 methamphetamine in his vehicle. The officer also found a scale and packaging baggies upon
7 further search. A blood sample was obtained which indicated presumptive positive result of
8 methamphetamine.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 (Providing False Statements of Fact on Application for Licensure)

12 12. Respondent's application is subject to denial under sections 2866 and 480,
13 subdivision (c), in that Respondent knowingly made a false statement of fact, by failing to
14 disclose his May 21, 2002, November 18, 2002, and August 26, 2004 convictions. Complainant
15 refers to, and by this reference incorporates, the allegations set forth above in paragraph 11,
16 subparagraphs (a) through (f), inclusive, as though set forth fully herein. In addition, Respondent
17 signed and certified under penalty of perjury, under the laws of the State of California, that the
18 foregoing was true and correct on page 1 of his application and record of conviction for licensure.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 (Acts If Done By Licentiate Would Be Grounds For Discipline)

22 13. Respondent's application is subject to denial under Code sections 2866, 480,
23 subdivision (a)(3) and 493 in that Respondent committed acts which if done by a licentiate would
24 be grounds for suspension or revocation of his license. Complainant refers to, and by this
25 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) through
26 (f), inclusive, as though set forth fully herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying the application of John Richard Deleon for Vocational Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: August 26, 2010



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
State of California
Complainant

LA2010502537
statement of issues.rtf